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judgment by way of estoppel seems sound on principle, and the present tendency,²⁴ as illustrated in a recent case, *Rao v. Oke* (1908) 11 Bombay L. Rep. 51, is to uphold this view.

TORT LIABILITY OF A LUNATIC'S COMMITTEE.—Although the positions of trustees, executors and administrators, receivers, and guardians of infants and insane persons are analogous in that the property involved is administered for the benefit of others, only trustees, executors, and administrators are vested with legal title.¹ Incidental to bare ownership they enjoy some prerogatives of title, but are also liable to its burdens. It is fundamental, however, that the appointment of a receiver, guardian, or committee of a lunatic, does not divest the owner of title.² Their positions are, indeed, not identical. While the power to appoint receivers is deemed inherent in a Court of Equity because of the inadequacy of legal remedy,³ and the appointment of a guardian was assumed by Chancery to carry out a duty resting on the King,⁴ the supervision of a lunatic's affairs, originally exercised by the sovereign, was by him delegated to the Chancellor in person.⁵ In general, in the absence of statutory authority, neither guardians nor committees may sue in their own names for the recovery of, or injury to, the property under their care.⁶ But, in some jurisdictions, where the chancery guardian has been confused with guardians in socage, he is deemed to have a sufficient interest in the realty to sue.⁷ However, the tendency is apparently to allow receivers to bring possessory actions,⁸ although when they sue, or are sued, in their own or their representatives' capacities, leave of the court must first be had.⁹ This is also the New York rule in suits against the committee of a lunatic.¹⁰

Despite differences in their relation to the property, however, there is no necessary reason for a distinction in the tort liability of these persons. True, the liability of the trustee or executor for injuries to strangers from defective premises is put upon the ground that he is the owner of the land.¹¹ And it has been held in Massachusetts that a lunatic is liable for such injuries.¹² Nevertheless, although in New York, an infant under

²⁴*Wade v. McDougal* (1906) 59 W. Va. 113; *Oberlein v. Wells* (1896) 163 Ill. 101; see *Barrell v. Trust Co.* (1895) 27 Ore. 77.

¹*Woerner, Guardianship* § 53.

²*Van Horn v. Hann* (1877) 39 N. J. L. 207; *Rollins v. Marsh* (1880) 128 Mass. 110; *Pharis v. Gere* (1888) 110 N. Y. 336; *Lee v. Lee* (1876) 55 Ala. 590; *Ellicott v. Warford* (1853) 4 Md. 80.

³*Beach, Receivers* §§ 1, 3.

⁴2 Story, *Eq. Jur.* §§ 1333-7.

⁵*Van Horn v. Hann, supra*; *Guardian of Bergen v. Wallace* (1896) 55 N. J. Eq. 192; *Beverley's Case*, 4 Coke 123b.

⁶*Cocks v. Darson* (1619) Hobart 215; *Lane v. Schermerhorn* (N. Y. 1841) 1 Hill 97; *Granby v. Amherst* (1810) 7 Mass. 1.

⁷*Shoplane v. Roydler* (1603) Cro. Jac. 55 and 98; *People v. Byron* (1802) 3 Johns. Cases 53; *Hughes's Minors Appeals* (1866) 53 Pa. St. 500; *Brooks v. Brooks* (N. C. 1843) 3 Ired. L. 389.

⁸*Singerly v. Fox* (1874) 75 Pa. St. 112; *Gardiner v. Smith* (N. Y. 1858) 29 Barb. 68.

⁹*Davis v. Snead* (Va. 1880) 33 Gratt. 705 at 709; *Barton v. Barbour* (1881) 104 U. S. 126.

¹⁰*L'Amoureux v. Crosby* (N. Y. 1831) 2 Paige 422.

¹¹*Moniot v. Jackson* (N. Y. 1903) 40 Misc. 197; *Parmenter v. Barstow* (1900) 22 R. I. 245.

¹²*Moran v. Devlin* (1882) 132 Mass. 87.

guardianship has been held personally suable by virtue of his ownership,¹³ a lunatic's liability, as well as that of his committee in a representative capacity, has been repudiated.¹⁴ It is submitted, however, that the true criterion is not the ownership, but the control and duty to repair. Thus a land owner frees himself from liability for injuries from subsequent defects by a lease of the premises,¹⁵ though if he covenants to repair, he is still suable.¹⁶ Although the infant landowner's liability in New York does not accord with this position, the exemption of an insane owner does, and in conformity with this exemption the New York courts have recently allowed an action against the committee in person. *Rooney v. People's Trust Co.* (1908) 114 N. Y. Supp. 612.

It is well recognized, however, that public ministerial officers are responsible only for their own wrongs, whether of malfeasance, misfeasance, or negligence.¹⁷ The rule *respondeat superior* is inapplicable.¹⁸ Within this principle comes the receiver,¹⁹ and, equally well it seems, the guardian, or committee, provided he uses due care in the selection of servants, and their employment is by express order of court or implied from the necessities of the situation.²⁰ Nor is it material that the officer is compensated for the performance of his duty.²¹ A public officer may not be sued in his representative capacity if such an action would be an attempt to reach the funds of the state.²² In this respect the distinction has long been settled that private funds in the hands of a receiver may be reached for a tort in the administration of the business or estate for which the receiver is not personally liable.²³ Likewise with respect to such wrongs the guardian or committee should be suable in a representative capacity. It is no injustice to charge the estate for unavoidable expenses incidental to its care. The same principle is illustrated in the case of trustees, who, since they do not act in a strictly representative capacity must be sued personally, but may indemnify themselves from the estate, a remedy to which the injured person is often subrogated.²⁴

¹³*McCabe v. O'Conner* (N. Y. 1896) 4 App. Div. 354, aff. (1900) 162 N. Y. 600.

¹⁴*Ward v. Rogers* (N. Y. 1906) 51 Misc. 299.

¹⁵*Jennings v. Van Schaick* (1888) 108 N. Y. 530; *Gridley v. City of Bloomington* (1873) 68 Ill. 47; *City of Lowell v. Spaulding* (Mass. 1849) 4 Cush. 277.

¹⁶*City of Peoria v. Simpson* (1884) 110 Ill. 294.

¹⁷*Throop, Public Officers* § 724; *Bennett v. Whitney* (1884) 94 N. Y. 302.

¹⁸*Walsh v. N. Y. & Brooklyn Bridge* (1884) 96 N. Y. 427.

¹⁹*Cardot v. Barney* (1875) 63 N. Y. 281; *Little v. Dusenberry* (1884) 46 N. J. L. 614.

²⁰*Cardot v. Barney, supra*; *Hall v. Smith* (1824) 2 Bing. 156.

²¹*Cardot v. Barney, supra*.

²²*Little v. Dusenberry, supra*.

²³*Ohio & Miss. R. R. Co. v. Davis* (1864) 23 Ind. 553; *Meara's Admin. v. Holbrook* (1870) 20 Oh. St. 137; *Metz v. Railroad Co.* (1874) 58 N. Y. 61; *Klein v. Jewett* (1875) 26 N. J. Eq. 474.

²⁴*Bennett v. Wyndham* (1862) 4 DeG. F. & J. 259; *Raybould v. Turner* (1899) 1 Ch. Div. 199.